

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 692 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
?

=====

RAMJAN HASAM - Appellant(s)**Versus****STATE OF GUJARAT \ - Opponent(s)**

=====

Appearance :THROUGH JAIL for Appellant(s) : 1, MS RV ACHARYA for Appellant(s) : 1,
MR HM PRACHCHHAK APP for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA****Date : 11/08/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)**

1. The appellant has preferred this appeal under

Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment dated 23-6-1999 passed by the learned Sessions Judge, Jamnagar in Sessions Case No. 7 of 1999, by which he was convicted for the offence punishable under Section 302 and 498-A of the I.P. Code and sentenced to undergo life imprisonment and to pay fine of Rs.500/-, in default thereof, to undergo simple imprisonment of two months. No separate sentence was awarded for the offence punishable u/s 498-A of the I.P.Code. The learned trial Judge acquitted the appellant for the charge u/s 404 of the I.P. Code.

2. The facts, in nut shell, emerging from the prosecution case are that deceased Jenamben was married to the accused before about 15 years of the incident and they had three children out of the marriage. Initially after the marriage, the accused was residing with Jenamben at village Khristi and thereafter they shifted to village Raval. The accused was giving mental and physical torture to deceased Jenamben and was demanding money. On 18-8-1998 at about 12-00 at midnight the accused demanded ear-rings worn by deceased Jenamben and also demanded few saris which Jenamben refused to give. Therefore, the accused got instigated and started beating with kick and fist blows. Thereafter, the accused strangled deceased Jenamben by towel. On account of strangulation deceased Jenamben became unconscious and succumbed to the injuries. The accused dishonestly misappropriated ear-rings worn by

deceased Jenamben.

3. On the basis of the complaint lodged by Rehmatben Valihusein Ibrahim mother of deceased Jenamben, offence was registered as I - CR No. 80 of 1998 at Kalyanpur Police Station for the offence punishable u/s 302 of the I.P. Code and investigation was started. During the course of the investigation, dead body of Jenamben was sent for postmortem examination. Panchanama of scene of offence and panchnama of recovery of muddamal towel were drawn. Statements of the witnesses were recorded and the accused was arrested.

4. On completion of the investigation, charge sheet was laid before the Judicial Magistrate, First Class, Kalaynpur - Jamkhambhaliya, Dist. Jamnagar for the offences punishable u/s 302, 404 and 498-A of the I.P. Code against the accused. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Jamnagar and it was registered as Sessions Case No. 7 of 1999. Learned Sessions Judge, Jamnagar framed charge Exh. 4 against the accused for the offences punishable u/s 498-A, 302 and 404 of the I.P. Code and the same was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence

by prosecution the learned trial Judge explained to the accused the incriminating circumstances appearing against him in the evidence. The accused denied having committed the offence in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973.

5. After hearing the learned A.P.P. for the State and the learned advocate for the accused, the learned trial Judge found the accused guilty for the offence punishable under Section 498-A and 302 of the I.P. Code and convicted and sentenced him to undergo the sentence as mentioned hereinabove. The trial court acquitted the accused of the offence punishable u/s 404 of the I.P. Code. Therefore, the accused has challenged the impugned judgment in this appeal.

6. We have heard the learned advocate for the appellant and the learned A.P.P. Mr. H.M. Prachchhak, for the respondent - State at length and in great detail. We have also perused the judgment of the trial court as well as the record and proceedings of the case.

7. Learned advocate for the appellant submitted that the eye witness has turned hostile and there is no other corroborative piece of evidence to connect the appellant with the offence. The medical evidence also indicates that death was on account of strangulation which was possible by suicide. Therefore, the prosecution has not proved that death

was homicidal. He also submitted that the deceased was pregnant at the time of incident and she had committed suicide as she could not bear pain. He submitted that no independent witnesses are examined to prove the case and therefore the impugned judgment of the trial court is illegal and erroneous. Therefore, the judgment of the trial court requires to be set aside and the appeal deserves to be allowed.

8. Learned A.P.P. Mr. H.M. Prachchhak for the respondent - State vehemently opposed the appeal and submitted that the prosecution has proved the case beyond reasonable doubt by adducing the evidence in the form of medical evidence and the evidence of the mother of deceased Jenamben. The evidence clearly indicates involvement of the appellant in the offence and therefore no interference is warranted in the judgment of the trial court and the appeal deserves to be dismissed.

9. We have considered rival submissions advanced by the learned advocates for the parties and have perused the judgment of the trial court and record and proceedings of the case.

10. The prosecution examined P.W. 1 Dr. Govindbhai Laxmanbhai Maru at Exh. 8. The witness deposed that he had performed postmortem of the dead body of deceased Jenamben and the external injuries found of the dead body were recorded in Column No. 17 and

internal injury in Column No. 20 of postmortem Note Exh. 9. He deposed that cause of death was due to asphyxia. In the cross-examination, the witness denied suggestion that pregnant woman sometime would have breathing problem. He admitted that a person can sometime strangle himself. Except that, there is no cross-examination with regard to the injuries found on the dead body of deceased Jenamben.

11. P.M. Note Exh.9 indicates external and internal injuries found on the dead body of deceased Jenamben. It also indicates that cause of death was due to asphyxia. In view of this evidence, it is clear that the prosecution established that Jenamben died on account of strangulation. Except suggestion that a person can strangle himself, there is no cross-examination with regard to the injuries found on the dead body of the deceased. P.M. Notes indicate that there were about 8 external injuries on the dead body of the deceased. Looking to the said external injuries, it would be difficult to believe that a person committing suicide by strangulation would be able to cause such number of external injuries by self-infliction. Therefore, the defence that the injuries were suicidal in nature cannot be accepted. Considering the medical evidence, in our view, the prosecution proved beyond reasonable doubt that the injuries found on the dead body of deceased Jenamben were sufficient in the ordinary course of nature to cause death and the death was homicidal in nature. Therefore, the submission that

the deceased committed suicide cannot be accepted.

12. The prosecution examined P.W. 2 Rahematben Huseinbhai the mother of the deceased at Exh. 10. She deposed that her daughter used to tell her that the accused was beating her for liquor and gambling and before a year of the incident the accused caused head injury to her daughter Jenamben. She also deposed that after two months of shifting to village Raval Jenamben came to see her and told her that her husband (appellant) was demanding ornaments and money and was inflicting physical cruelty. She further deposed that she was informed that her daughter Jenamben is not well and therefore she with her sister-in-law (Nanand i.e. Husband's sister) went to village Raval at the place of Anvar who informed her that the accused had killed Jenamben. In the cross-examination the witness denied that her daughter was not keeping good health after six or seven months' pregnancy and therefore she committed suicide. The witness has not been cross-examined with regard to demand of money and illtreatment and therefore except this there is no other effective cross-examination. It is clear from the evidence that before one year of the incident the appellant had beaten the deceased. The evidence also indicates that the appellant demanded money and ornaments to satisfy his needs of liquor and gambling but the deceased did not accede to the demands and therefore the appellant used to illtreat her with physical cruelty. It also indicates that the deceased used to

make complaints to her mother i.e. P.W. 2 Rehmatben about the demands and illtreatment by the appellant. Therefore, in our view, the prosecution proved beyond reasonable doubt that the appellant used to make demands of money and ornaments from the deceased and as the deceased refused to give the appellant used to physically illtreat her.

13. The prosecution examined P.W. 3 minor Madina Ramzan at Exh. 11 who is the daughter of the appellant. The witness turned hostile and not supported the prosecution case. However, learned A.P.P. of the trial court in the cross-examination has been able to elicit that the witness in her statement before the police stated that she woke up on account of crying of her mother and saw that the accused was physically beating her mother. In the cross-examination by defence the witness stated that health of her mother was not good and she was frequently telling her that she wants to die. She also stated in the cross-examination that her father (appellant) was driving tractor and was earning and on the next day of the incident she saw the muddamal towel on the ceiling fan and the wings of the fan were damaged. In view of cross-examination of the witness, it becomes clear that the witness has deviated from her police statement. It appears that the statements made in the cross-examination by the defence were made with a view to suit the defence that the deceased committed suicide. The contradictions in the deposition of this witness have

been proved through Investigating Officer P.W. 13 Bhanvarlal Magaram Chauhan. On evaluating the the evidence, it appears that the witness is not telling the truth in order to save her father, the appellant.

14. As regards the presence of the appellant at the place of the incident at the time of offence, it appears from the evidence that the incident occurred at midnight in the house wherein the appellant, deceased and the witness Madina were staying. It is quite obvious that the appellant being the head of the family would be at the house at midnight. The appellant has not contended that he was not present in the house at the time of occurrence. In view of this, it is clear that except daughter Madina and the appellant, no other person was in the house at the time of occurrence. The deceased met with a homicidal death as discussed earlier. Looking to the age of P.W. 2 Madina, it would be difficult to infer/conclude that she could have committed murder of her mother. It is not even anybody's case. Therefore, the only person capable of committing the offence present in the house at the time of offence and having motive to commit offence would be none other than the appellant. In view of this evidence and attending circumstances the presence of the appellant at the time and place of incident is quite obvious. It is not a defence that the appellant was not present in the house but was somewhere else

at the time of incident. Therefore, in our view, the prosecution successfully proved that the appellant was involved in the offence.

15. The prosecution also examined P.W. 4 Labhuben Ikbal at Exh. 12 who is the sister of the appellant. She turned hostile and hence her evidence is not of much assistance.

16. The prosecution produced First Information Report Exh. 30 given by Rehmatben. According to this, the incident occurred at midnight on 18-8-1998 and the information with regard to the offence was given to the police station at 13-00 hours on 19-9-1998. It gives details about the incident and the motive behind the offence. The details of F.I.R. Exh. 30 are supported by the oral evidence. Therefore, in our view, the prosecution proved the case beyond reasonable doubt by unbroken chain of the circumstances.

17. The prosecution examined P.W. 13 Bhanvarlal Magaram Chauhan at Exh. 29 who carried out investigation to prove the contradictions. However, the defence has not been able to demonstrate that the investigation was not carried out properly.

18. In view of above evidence, the defence has not been able to substantiate its defence that the deceased committed suicide by strangulation. The defence has not been able to demonstrate that the

deceased committed suicide by hanging herself with towel on the ceiling fan. The evidence does not indicate recovery of towel or damage to the wings of ceiling fan. In view of this, we are not inclined to accept the defence that the deceased committed suicide and the appellant is not responsible for her death. Therefore, in our view, the prosecution proved the case beyond reasonable doubt against the appellant and the learned trial Judge is justified in recording conviction of the appellant for murder of Jenamben. Hence, no interference is warranted in the judgment of the trial court. Therefore, the appeal is required to be dismissed.

19. For the foregoing reasons, the appeal fails and is dismissed and the judgment and order of conviction dated 23-6-1999 passed by the learned Sessions Judge, Jamnagar in Sessions Case No. 7 of 1999 is confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

/JVSatwara/